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I. The Scope of the Problem

The wearing of wigs by military reservists as a method of conforming with the respective grooming and haircut standards set by the various Armed Services has burgeoned into a panoply of litigation in the past few years. The position of the Armed Forces in this matter has been basically one of opposing the use of short hair wigs to meet haircut standards, while the arguments of the reservists have centered on their "quasi-military" status and the fact that by the use of hairpieces they are outwardly conforming to the hair regulations and policies. This article will deal with several facets of the controversy including when a reservist can safely wear a wig, what written and unwritten regulations the military has used to attempt to thwart this method of compliance, the development of the pertinent cases, the prospects for future litigation and a suggested solution to the problem.

A. *Reservists: The Wearing of Wigs for Weekend Drill and for Summer Active Duty*

The wig controversy has thus far centered primarily on the wearing of wigs during the reservist's weekend drills. The only other contact

† The views expressed by this article must be considered the views of the individual author and do not purport to promulgate or voice the views of the Judge Advocate General of the Navy, or any other agency or department of the United States.

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of reservists with active duty occurs during the reservist's summer training duty. This usually lasts approximately two to four weeks a year. The cases have, for the most part, upheld the right of reservists to wear wigs during their weekend forays into the military sphere while at least one case has hinted that wigs can be legally banned for the longer active duty for training periods.[1]

B. *Regulars: Can They Ever Legally Wear Wigs?*

The present policy of the Navy as well as the Air Force is that wigs can be worn by regular servicemen on active duty only to "cover natural baldness or for cosmetic reasons (disfiguration)."[2] However, at least as to the Navy, this policy cannot be found in any written regulation but only in individual letters issued by the Bureau of Naval Personnel on a case by case basis. An obvious objection which immediately appears from the "baldness-disfiguration" exception is that this policy discriminates between those persons who are not so unfortunate so as to meet this criteria and those who do. At least one court has found this distinction to be unconstitutional; however, the court only directed its remarks regarding this policy in its application to reservists.[3] It appears safe to say, however, that this same distinction among regulars would also fall. Another consideration is that if reservists are to be allowed to wear wigs, then a prohibition against the wearing of wigs by regulars would appear to violate a federal statute which forbids discrimination between regulars and reservists.[4]

II. The Present Regulations and Their Interpretations

A. *Navy*

The only codified statement regarding hair is found in United States Navy Uniform Regulations, 1969, chapter one, section one (ap-

1. Harris v. Kaine, 352 F. Supp. 769 (S.D.N.Y. 1972).
2. Etheridge v. Schlesinger, 362 F. Supp. 198, (E.D. Va. 1973).
3. *Id.*
4. 10 U.S.C. § 277 (1970) states:
"Regular and Reserve Components: Discrimination Prohibited"
Laws applying to both Regulars and Reserves shall be administered without discrimination—
(1) among Regulars;
(2) among Reserves; and
(3) between Regulars and Reserves

pearance), article 0111 (grooming). The provision is divided into two basic sections, one applying to men, the other, to women. Although the regulation states that no exact minimum or maximum length is prescribed, it states an assortment of criteria which the hair must meet. The first section, which discusses grooming for men, states that hair must be neat, clean, trimmed, present a groomed appearance, not touch the collar, not fall below the eyebrows, not brush excessively below the band of properly worn headgear and not interfere with the wearing of such military headgear. Certain hair styles are permitted such as "Afro" or "natural," but they too, must meet the various criteria stated above. The regulation prohibits other hair styles such as plaited or braided hair when worn while in uniform or in an active duty station.

The second section pertains to women.[5] The main difference in treatment appears to be that while men's hair may not touch the collar, women's may.

As can be seen, there is absolutely nothing in the regulations about the wearing of wigs. In effect, the regulations state the *ends* to be achieved and wigs are merely a *means* for achieving that end.

In late August, 1973, the Navy issued a message to all reserve units which allows the wearing of wigs to drill by reservists.[6] This was a drastic change from the Navy's prior policy of wig prohibition.

B. *Marine Corps*

The Marines have the most stringent hair restriction of any of the Armed Services. Their regulation for men prescribes the length of hair as well as its style. The hair must be neat, closely trimmed at the top, sides, and back, and must present an "evenly graduated appearance."

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5. Uniform Navy Reg., art. 0111(2a) (1969). Waves are allowed to wear wigs by way of an unwritten policy. This discrimination between men and women is subject to attack. *See* Frontiero v. Richardson, 411 U.S. 677 (1973).

6. Message from the Chief of Naval Operations to the Chief of Naval Reserve, Aug. 23, 1973, which stated:

1. In response to questions concerning the wearing of wigs by Naval Reservists performing inactive duty for training (drills) the following policy guidance is provided:
   A. Wigs may be worn provided that
      (1) outward appearance conforms to grooming regulations . . . .
      (2) they are well fitting and of good quality.
      (3) they do not interfere with the proper performance of duty.
2. There is no change concerning the standards to be applied to active duty personnel including reserve personnel on active duty for training.

The maximum hair length is three inches and conspicuous sideburns are prohibited.[7]

The Marines, unlike the Navy and the Air Force, do not permit, as a matter of policy, the wearing of wigs for any reason. This eliminates the attack of discrimination in favor of bald or disfigured personnel, since they cannot wear wigs either.

C. *Army*

Until recently, the Army has also had a prohibition against the wearing of wigs to comply with grooming standards.[8] However, the Army has changed its written regulation to allow reservists to wear wigs during weekend drills as well as during the summer training duty.[9] The Army still maintains a prohibition against the wearing of wigs by regulars; there are, however, exceptions for baldness or disfiguration.[10]

D. *Air Force*

The grooming regulations of the Air Force discuss both hair and the wearing of wigs.[11] The Air Force hair section pertaining to men is essentially the same as that of the Navy's. The section also lists criteria which, in effect, set a maximum hair length, although no specific statement regarding hair length is stated such as in the Marine or Navy regulations. The hair style worn is also subject to the listed criteria.

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7. Marine Corps Order No. 1020.34B, ¶ 1101 (April 22, 1966).
8. Army Reg. No. 600-20, ¶ 5-39.
9. *Id.* as amended by change made in message from the Chief of Naval Operations to the Chief of Naval Reserve, Feb. 23, 1973 which stated:
> Male members of the reserve components may wear a wig or hair piece during unit training assemblies and when serving on active duty for training for periods of thirty days or less or on full time training duty for periods of thirty days or less, if it conforms to the standard haircut criteria stated above and does not interfere with performance of duty. When ordered, for a period of more than thirty days to active duty, active duty for training, or full time training duty, the wearing of a wig or hair piece by male members of the reserve components in uniform or on duty is prohibited except as provided in subparagraph 5-39C(4), above.

Id. ¶ (D).
10. *Id.* ¶ (D)(4).
> The wearing of a wig or hairpiece by male personnel while in uniform or on duty is prohibited except to cover natural baldness or physical disfiguration caused by accident or medical procedure. When worn it will conform to the standard haircut criteria as stated.

11. Air Force Reg. dated Dec. 1, 1972, reference AFM 35-10 relating to the wearing of wigs.

On the wearing of wigs, the section states that wigs can be worn while on duty or in uniform only for cosmetic reasons to cover natural baldness or physical disfiguration. The wig itself must conform to the standards set for natural hair.

In sum, the present situation regarding the positions of the various services is:

(a) Navy: unwritten policy permitting wigs to be worn by regulars or reservists for baldness or cosmetic reasons; written policy allowing wigs to be worn by all reservists during drills;
(b) Marine Corps: unwritten policy prohibiting wigs under any circumstances;
(c) Army: written policy allowing regulars to wear wigs only for baldness or disfiguration; written policy allowing reservists to wear wigs during weekly drills and during active duty for training under thirty days;
(d) Air Force: written wig policy allowing the wearing of wigs for cosmetic or baldness reasons.

III. The History of the Wig Cases and Their Development

A. *The Pre-Wig (Hair) Cases*[12]

The first major development in the military cases regarding hair and the subsequent wig controversy occurred in *Smith v. Resor*.[13] Here, the plaintiff was a member of a local rock and roll group known as "The Fugitives." The plaintiff, Smith, due to his band membership commenced to grow his hair longer than that permitted by Army regulations. After approximately three years, Smith moved up the theatrical ladder to a group called the "Laffin Giraffe" and continued to let his locks grow. As a result of plaintiff's hirsute appearance his participation in his required reserve drills was deemed to be unsatisfactory and pursuant to section 673(a) of the United States Code,[14]

12. The distinction should be drawn between "hair cases" not involving the wearing of wigs and solely concerning persons seeking to wear hair longer than that permitted by the written grooming regulations and the "wig cases" in which the grooming regulations are attempted to be complied with (or circumvented, depending on one's point of view) by the use of a wig.
13. 406 F.2d 141 (2d Cir. 1969).
14. 10 U.S.C. § 673a (1970), provides that notwithstanding any other provision of law, the President may order to active duty for not more than 24 consecutive months any member of the Ready Reserve of an armed force who:
(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;
(2) has not fulfilled his statutory reserve obligation.

and the applicable regulations, plaintiff became liable for call-up to active duty for a period not to exceed a total of 24 months. Because the Army failed to follow its own procedures and safeguards in dealing with Smith (Smith was told he had no rights of administrative relief regarding his call-up orders), a stay of the call-up was granted and the Army was directed to permit full appeal by Smith.

It is significant to note that the basis of Smith's refusal to cut his hair was that it was necessary to his occupation. The court, however, refused to review the validity of the Army's policy of activating reservists because of unsatisfactory drill performance resulting from improper haircuts. In dicta, the court also stated that the appearance of a reservist is, absent extraordinary circumstances, within the jurisdiction of the Army.[15]

The next development in the Army Reserve occurred in the case of *Raderman v. Kaine*.[16] This case, too, involved a battle between the world of rock and roll and the military. Here, the plaintiff, Raderman, was an agent for rock and roll bands, and as such, had argued that the length of his hair was necessary to his occupation. Here, the court squarely faced the constitutional issue in the hair dispute, stating that being in the Army suspends certain constitutional rights.[17] The court reaffirmed the dicta in *Smith* that appearance of its personnel is a matter within the jurisdiction and reasonable discretion of the Army.[18] The court stated the reservist's dilemma, thus:

> The problem with a reservist, such as Raderman, is that he is neither a civilian nor a fulltime soldier. In effect he must live in two worlds, one military and one civilian and attempt to satisfy the requirements of both.[19]

The court also went on to state that even though the appearance of the military has changed radically throughout history, "past practices afford no criteria for the present,"[20] and a court is in no position to make a judgment in this type of case.

The first National Guard case regarding activation because of unsatisfactory drill performance due to length of hair sprung up in early 1970, in *Gianatasio v. Whyte*.[21] Again, the plaintiff attempted to justify

15. Smith v. Resor, 406 F.2d 141, 145 (2d Cir. 1969).
16. 411 F.2d 1102 (2d Cir. 1969).
17. *Id.* at 1104.
18. *Id.* at 1106.
19. *Id.*
20. *Id.*
21. 426 F.2d 908 (2d Cir. 1970).

his wearing of long hair by his occupation. Here it was argued that "since it is now fashionable for men to have long hair and since [plaintiff] . . . is now a salesman of fashionable shoes and clothing he could not possibly sway someone toward a look, that with a short haircut, he would appear for all purposes, not to understand."[22] The court followed *Raderman* in upholding the military, but tucked away in the final paragraph of the court's opinion is the following omen:

> Appellant's final argument apparently seeks to have us overrule Raderman v. Kaine, *supra*, on grounds that the Guard's "neat appearance" rules unjustly deprive him of his right to a livelihood in civilian life. We decline so to rule and note in the words of the court below ". . . *that the plaintiff could have worn an appropriate wig, thereby complying with military requirements and satisfy the appearance needs of the job.*"[23]

In *Krill v. Bauer*,[24] the defendant Army emerged victorious as the court sustained the Army's hair regulations and held that Army reservists were not entitled to an injunction against the enforcement of these regulations on the ground that the regulations subjected plaintiffs to additional unexcused absences thereby making them liable for involuntary active duty. The court found the regulations to be constitutional. The issue posed was stated and answered by the court in this manner: "Does being in the Army curtail or suspend certain Constitutional rights?, the answer is unqualifiedly 'yes'."[25]

The authoritative case in the pre-wig area is *Anderson v. Laird*.[26] In this case plaintiff did not allege an occupational justification for his long hair, but based his claim solely on the bare "right to wear his hair 'in a style currently fashionable.' "[27] The court sua sponte brought up the matter whether a reservist or a National Guard member should be afforded different treatment "inasmuch as a substantial portion of his time is spent in civilian pursuits rather than military."[28] This theme, as we will see, has played a decisive role in the wig cases.

The court in *Anderson* upheld the military's position on the hair

22. *Id.* at 909.
23. *Id.* at 911 (emphasis added). Note, however, that this sentence is somewhat ambiguous in that it is unsure whether the court meant for plaintiff to wear a short wig during his military duty and retain his natural long hair, or wear a long hair wig for civilian life and have short natural hair. It appears to this writer that the court meant the former.
24. 314 F. Supp. 965 (E.D. Wis. 1970).
25. *Id.* at 966-67.
26. 437 F.2d 912 (7th Cir. 1971).
27. *Id.* at 913.
28. *Id.* at 915.

issue. The opinion of Judge Reynolds (concurring in part and dissenting in part), however, plants the seeds for many of the opposite holdings in the subsequent wig cases. First, he states that the right to wear one's hair in any style he desires is an ingredient of personal freedom which is constitutionally protected and that in order for a state to curtail this right, it must show a substantial justification.[29]

Second, the theme of the minimal amount of time spent by the reservist in the military sphere as opposed to the civilian sphere is discussed (as in *Anderson*). The opinion demonstrates concern that the majority apparently took an "all or nothing approach" in stating that if the appellant was not completely civilian, then he must be completely military. This categorization of the reservist as being completely military allowed the majority to conclude that nothing more need be shown by the defendant to justify this interference with the reservist's private life.

Finally, Reynolds ends his separate opinion by stating:

> . . . I am presently unconvinced that short hair in the national guard is sufficiently important to the orderly administration of our armed forces to warrant the punitive activation of a guardsman who asserts the right to determine the length of his own hair.[30]

The final case in the pre-wig cases is *Agrati v. Laird*.[31] Here, an entertainment personality (Don Grady of television's "My Three Sons") sought an exception to the Army Reserve hair policy. In a brief opinion, the court, citing the classic case of *Orloff v. Willoughby*,[32] regarding the reluctance of courts to interfere with the legitimate exercise of discretion over military internal matters, and *Raderman*, affirmed the opinion of the district court holding for the Army.

In summarizing the pre-wig cases, the major impact is that of total military victory on the hair issue. The constitutional bases alleged by the plaintiffs encompassed the first, ninth, and fourteenth amendments. Despite these constitutional allegations, the courts had found that "the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty."[33] It is also important to note that at this point in the development of the cases,

29. *Id.* at 916 (Reynolds, J., concurring & dissenting opinion).
30. *Id.* at 917.
31. 440 F.2d 683 (9th Cir. 1971).
32. 345 U.S. 83 (1953).
33. Burns v. Wilson, 346 U.S. 137, 140 (1953).

the courts had also found that they had jurisdiction to decide the cases and had done so on the merits.

B. *The Wig Cases*

The first major decision in which a reservist attempted to comply with the hair regulations by using a short hair wig was an Air Force case, *Cossey v. Seamans*.[34] Here the court decided the case on the jurisdictional issue, finding that (1) no jurisdictional amount had been shown under the federal question statute,[35] (2) the mandamus statute[36] could not be used to create jurisdiction where none existed before, and (3) matters of dress and appearance are within the discretion of the military and are not judicially reviewable under the Administrative Procedure Act.[37] The court, in its discussion of the lack of jurisdiction under the mandamus claim of plaintiff, cited the prior hair cases with approval, using them to demonstrate the lack of existence of a clear right on the part of the plaintiff to the relief requested, and the lack of a clear duty on the part of the defendant to the plaintiff.[38] The court also found that even though there may be no other adequate remedy available to plaintiff, this alone does not establish jurisdiction under the mandamus statute,[39] where the two other elements for mandamus relief have been found to be lacking.[40]

The next case, *Harris v. Kaine*,[41] has stood out as a landmark in this area along with *Friedman v. Froehlke*.[42] *Harris* was an action by an Army reservist in which it was alleged that the Army regulation prohibiting the wearing of wigs *at reserve meetings* (as opposed to the summer active duty for training periods) infringed unnecessarily on his constitutional rights under the fifth and fourteenth amendments.

The court found jurisdiction on all the grounds alleged by plaintiff.[43] This was an obvious turnaround from the preceding decision in

34. 344 F. Supp. 1368 (W.D. Okla. 1972).
35. 28 U.S.C. § 1331 (1970).
36. *Id.* § 1361.
37. 5 U.S.C. §§ 701-04 (1970).
38. 344 F. Supp. at 1370.
39. 28 U.S.C. § 1361 (1970).
40. 344 F. Supp. at 1369-70.
41. 352 F. Supp. 769 (S.D.N.Y. 1972).
42. 470 F.2d 1351 (1st Cir. 1972).
43. The plaintiff alleged jurisdiction under the following statutes: 5 U.S.C. §§ 701-04 (1970); 28 U.S.C. §§ 1331, 1346(a)(2), 1361 (1970). Section 1346(a) provides:
The district courts shall have original jurisdiction, concurrent with the Court of Claims, of . . . .
(2) Any other civil action or claim against the United States, not exceeding $10,000

Cossey. First, the court found that plaintiff had stated a claim upon which relief could be granted, distinguishing the hair cases by stating:

> Unlike these cases, however, plaintiff does not ask the Court to determine what constitutes a neat and soldierly appearance or to grant him an exception to the standard. Rather, plaintiff contends that defendants have *exceeded their statutory authority* and unnecessarily infringed upon his constitutionally protected rights by prohibiting his wearing of a short-hair wig at drill meetings. Clearly, then the Court is faced with an *alleged* set of extraordinary circumstances to which the Court of Appeals has made reference.[44]

Second, on the matter of subject matter jurisdiction, the court found that while it had no jurisdiction to review purely discretionary acts of the Army, it did have jurisdiction to determine whether the Army has stayed within the bounds of its authorized discretionary sphere.[45]

One of the turning points in this case was that plaintiff, with his wig, did present a neat and soldierly appearance (the defendant Army conceded this). Since the Army regulation permitted bald or disfigured men to wear short hair wigs that conform to Army standards, and since the plaintiff spent only a small fraction of his time on military duty,[46] the court concluded that the defendant Army had exceeded its statutory authority in promulgating a regulation proscribing the wearing of wigs while in uniform or duty status.[47] Another key finding of the court was that the wearing of the wig did not interfere with the performance of plaintiff's duties at drill meetings (the Army conceded this point).

On the test to be applied, however, the court hedged. The court recognized a divergence of opinion on the burden the Government must overcome in order to be able to infringe on the right to govern one's own appearance. The two divergent views were a "substantial burden of justification," held by the Seventh Circuit; and a "legitimate

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in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

44. 352 F. Supp. at 771 (emphasis partially added).

45. *Id.* at 772.

46. *Id.* at 773 n.5.

Plaintiff seems to have conceded that during the time that he is on active duty, generally an annual two week period at summer camp, defendants have the statutory authority to require that his hair conform to AR 600-20 and that such an infringement upon his constitutional rights is justified.

Id.

47. *Id.* at 778.

governmental interest" requiring the restriction, held by the First Circuit. The court found that the defendants had satisfied neither test and, therefore, did not determine which one was applicable.[48]

In *Bellamy v. Froehlke*,[49] Judge McMillan, in a brief opinion, granted a temporary restraining order against the defendant Army and made an important contribution to the case law regarding the baldness and disfiguration exception which was written into the Army wig regulation at that time. The court stated that plaintiff's complaint stated a valid prima facie ground for relief. The complaint stated:

> . . . the regulation invidiously discriminates between reservists who are scarred or naturally bald on the one hand and reservists like the plaintiffs whose defect is a head of flowing locks which, like baldness or keloids, can be successfully and effectively concealed by a wig.[50]

In *Baugh v. Bennett*,[51] a renewed petition for habeas corpus seeking a court-ordered discharge from the military, an Idaho National Guard member, Baugh, was held to have fatally compromised his claim that the reason for his involuntary active duty stemmed from his wearing a wig to conceal his long hair. Here, the court based its holding in favor of the military on the fact that the call-up to active duty was based on the plaintiff's failure to attend required drills and not because he wore a wig when he did attend. The court, in dicta, went on to say that even if the plaintiff had not thus compromised his wig allegation, it would be without merit. The court, citing *Orloff*, *Arnheiter v. Chaffe*,[52] *Raderman*, and *Anderson*, relied on the rationale of the previous hair cases that the military has the authority to regulate its internal activities and these exercises of discretion are not subject to judicial review.[53]

In December, 1972, a victory for the Army was registered in *McWhirter v. Froehlke*.[54] The court held that (1) the subject matter of the suit was rightfully vested in military authority and was not a matter for the courts, (2) military regulations concerning hair length raised no constitutional implications, and (3) enhancement of discipline

48. *Id.* at 777.
49. 347 F. Supp. 1241 (W.D.N.C. 1972).
50. *Id.* at 1242.
51. 350 F. Supp. 1248 (D. Id. 1972).
52. 435 F.2d 691 (9th Cir. 1970).
53. 350 F. Supp. at 1251.
54. 351 F. Supp. 1098 (D.S.C. 1972). During the same period of time, however, the Army lost Krueger v. Laird, Civil No. 4-72 (D. Minn. Nov. 13, 1972).

furnished justification for the regulation.[55] The court cited the hair cases, relying heavily on *Anderson, Raderman* and *Cossey,* which had refused to make a distinction between the ends (uniform grooming) and the means (using a wig as a method of compliance). Furthermore, the court found the applicable standard to be that the government must show a "substantial justification" for the wig regulation.[56] The court found that the enhancement of discipline met this test.[57]

The second landmark opinion in the wig litigation came in a case styled *Friedman v. Froehlke,*[58] which declared that the Army wig regulation was invalid as applied to reserve members of the National Guard. The court first disposed of the defendant's arguments that the court lacked subject matter jurisdiction under the federal question statute.[59] The court went on to stress, as the *Harris* tribunal did, the very small fraction of time spent by the plaintiffs in the military sphere, the finding of the district court that the wigs in question cannot be detected nor can be easily dislodged, and the basic constitutional proposition that the right to wear one's hair as he wishes is a constitutionally protected freedom.[60] The final distinction made by the court is stated as follows:

> While the wig regulation appears in the section entitled "Appearance," it is not a regulation concerning appearance, but one prescribing a method of achieving the required appearance. The issue in the case, therefore, is not whether the Army or the Guard may adopt requirements affecting hair length and style. Plaintiffs must and do concede authority for appearance standards. Nor is the issue whether the Army may specify the manner in which a prescribed appearance is achieved for its *full-time* personnel. The narrow issue is whether the Guard may require *reservists* . . . to conform to Army haircut requirements.[61]

Comunale v. Mier[62] marks the last victory for the military on the wig issue. This was an action by an Air National Guard member to enjoin his commanding officer from enforcing the hair regulations against him and from refusing to allow the plaintiff to wear his wig

55. 351 F. Supp. at 1099-101.
56. *Id.* at 1101.
57. *Id.*
58. 470 F.2d 1351 (1st Cir. 1972).
59. *Id.* at 1352, *citing* 28 U.S.C. § 1331 (1970). For other comments by the court on the jurisdictional bases, see 470 F.2d at 1352 n.1.
60. *Id.* at 1353.
61. *Id.* at 1352 (emphasis added).
62. 355 F. Supp. 429 (W.D. Pa. 1973).

at drills. The military v. rock and roll music clash again surfaced because plaintiff was a member of a "hard rock" music group and claimed that if he had to cut his hair it would jeopardize his job. The possibility of plaintiff getting his natural hair cut and wearing a long wig while performing was mentioned by the court with the plaintiff, during his testimony, rejecting such an option since he works more time at his civilian job than in the military.[63] The court went on to state three factors that weighed heavily against plaintiff's claim: (1) plaintiff joined the Guard voluntarily and at that time agreed to comply with its regulations (the court ignored the claim made in later cases that in reality the joining of such a guard or reserve unit was not "voluntary" in the true sense of the word, because the individual would be subject to the compulsory draft if he did not enlist in such an organization), (2) the traditional *Orloff* theme that courts should not readily interfere in internal military matters, and (3) the regulation was part of a legitimate exercise of military discretion in controlling appearance of its members.[64]

The *Comunale* court dismissed the two most important wig opinions up to this point, *Harris* and *Friedman* in one sentence.[65] The most remarkable aspect of this feat was that the court did not even state a reason for its ignoring the two cases nor did it even attempt to distinguish them (probably because there was no valid basis for doing so). Instead, the court chose to rely on *Orloff* (a non-wig, non-hair case) and *Anderson* (a non-wig case). As a sidelight it should be noted that plaintiff appeared in court wearing his wig.

The first major development in the wig case area for the Marine Corps, the most austere of the services on the hair issue, was *Garmon v. Warner.*[66] It should be remembered that the Marine Corps hair regulation not only stated that hair should be worn neatly, etc., like the other service's regulations, but also specifies a three inch maximum length,[67] and makes no wig exceptions whatsoever, even for baldness or disfiguration. Plaintiffs were members of the Marine Corps Reserve Unit located in Charlotte, North Carolina. They wore wigs for several months before their superiors finally noticed them. At that time they were told that wigs would be thereafter prohibited. As a result, plain-

63. *Id.* at 431.
64. *Id.* at 431-32.
65. *Id.* at 431.
66. 358 F. Supp. 206 (W.D.N.C. 1973).
67. Marine Corps Order No. 1020.34B, ¶ 1101 (Apr. 22, 1966).

tiffs were subject to being marked absent without leave if they came to drill wearing their wigs as this would be considered by the Corps as no valid drill appearance at all.

The court found jurisdiction under the federal question statute.[68] The required amount in controversy of $10,000 was found existent, with the court including the value of the mental anguish suffered as a result of activation as part of its computations. An equitable approach to this valuation of constitutional rights was taken when the court stated that those who seem to deprive other men of loss of freedom for protracted periods cannot be heard to say that the loss of freedom was not worth more than $10,000.[69]

Jurisdiction was also found under the Administrative Procedure Act[70] and the mandamus statute.[71] The case stands as one of the few decisions in which the Administrative Procedure Act has been used as a grant of jurisdiction.[72]

In addressing the regulation itself, the court found that it contained no mention of wigs and no definition of hair as meaning natural "home-grown" hair, as opposed to natural "store-bought" hair. The court concluded that the no-wig fiat was based on a recently created and rigidly maintained, though not written or codified, policy.[73]

The standard used by the court was whether the "no wig" prohibition as applied to part-time reservists served any legitimate purpose of the military so as to justify intrusion into the civilian lives of reservists.[74] Note that the court here used a more liberal test than that used in *Anderson* and *McWhirter* (where a "substantial burden of justification" was necessary), and followed the test set down in *Friedman*.

The court disposed of the arguments made by the Marine Corps that (1) wigs would interfere with military operations, (2) wigs hurt the goal of discipline and group identification of the elite service, (3)

68. 358 F. Supp. at 208, *citing* 28 U.S.C. 1331 (1970).
69. 358 F. Supp. at 208. *Contra*, McGraw v. Farrow, 472 F.2d 952 (4th Cir. 1973).
70. 5 U.S.C. § 703 (1970).
71. 28 U.S.C. § 1361 (1970).
72. *See also* Friedman v. Froehlke, 470 F.2d 1351, 1352 n.1 (1st Cir. 1972); Rice v. United States, 348 F. Supp. 254 (D.N.D. 1972). *Contra*, Getty Oil Co. v. Ruckelshaus, 467 F.2d 349, 356 (3d Cir. 1972); Arizona State Dep't of Pub. Welfare v. Department of Health, Educ. & Welfare, 449 F.2d 456, 464 (9th Cir. 1971); Pan American World Airways v. CAB, 392 F.2d 483, 494 (D.C. Cir. 1968); Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe, 370 F.2d 529, 532 (8th Cir. 1967); Ove Gustavsson Contracting Co. v. Floete, 278 F.2d 912 (2d Cir. 1960); Magnolia Petroleum Co. v. FPC, 236 F.2d 785 (5th Cir. 1956); Yahr v. Resor, 339 F. Supp. 964 (E.D.N.C. 1972); McEachern v. United States, 212 F. Supp. 706, 710 (W.D.S.C. 1963). *See* Blackmar v. Guerre, 342 U.S. 512 (1952).
73. 358 F. Supp. at 209.
74. *Id.*

regulars and reservists should be treated alike as part of the "one service concept," (4) if part-time reservists were allowed to wear wigs, a spirit of non-cooperation between reservists and regulars would be fostered and a morale problem would arise and (5) all orders must be obeyed.[75] In answering these arguments the court stressed that there was a real difference between reservists and regulars, and that with wigs the outward appearance of plaintiffs conformed to the text of the written regulation.[76] The court cited with approval the two major cases of *Harris* and *Friedman* while noting that the cases have been divided on this matter.

On plaintiffs' constitutional argument regarding the right to wear their hair as they please under the due process clause of the fifth amendment, the court found the Marine hair regulation to be unconstitutional as applied.[77]

The court also refuted one of the prongs of prior military wig victories, such as *Communale*, which stated that plaintiff's claim should fail because he voluntarily joined the reserves and knew of the regulations and agreed to comply with them at that time. The defendants had contended that plaintiffs had waived any right to object to Marine hair regulations by voluntarily signing enlistment contracts knowing the Corps regulates personal appearance. The court found that there were two problems with this contention. In the first place, there was no evidence that any of the plaintiffs knew wigs were taboo for reservists (the hair regulation does not mention wigs, and the no wig rule did not even exist when they enlisted). Therefore, there was no knowing and voluntary relinquishment of an understood right. Second, the court found that it would be exceedingly unwise policy to deny to military volunteers the right to go to court to challenge the military wisdom or the constitutional validity of military regulations. The military was found to be already protected from any saturation barrage of court orders by the narrowness of the scope of available review, and there was no need to increase that protection by implying a waiver where none in fact took place.[78]

In *Hough v. Seaman*,[79] Judge McMillan again had an opportunity to further his reputation as an expert in the wig field.[80] In a rather

75. *Id.* at 210.
76. *Id.*
77. *Id.* at 211.
78. *Id.* at 211-12.
79. 357 F. Supp. 1145 (W.D.N.C. 1973).
80. Judge McMillan had previously decided both Bellamy v. Froehlke, 347 F. Supp.

short opinion, the judge held that the Air Force regulation prohibiting the wearing of wigs except for cosmetic reasons exceeded the authority conferred by statute and the Constitution on military commanders, constituted an unwarranted intrusion into civilian life, discriminated among reservists without necessary military basis, and, absent a knowing and intelligent waiver of an understood right, could not be enforced against reservists.[81]

The next decision regarding wigs was that of *Miller v. Ackerman*,[82] another Marine Corps case. This case is significant in that, for the first time, one branch of the military, the Marines, tried to distinguish itself from the other military services. Up to this point, the courts had assumed that the requirements and reasons set forth by the various services were all basically the same. In *Miller*, however, the Marine Corps argued it was sui generis because the Marine Corps is a separate, elite group of disciplined soldiers and the regulations adopted by the Corps are designed to reinforce this status as part of the Marine Corps mission, and the status of the Corps is maintained by the short hair rule, since it distinguishes the Corps from other military groups.[83] It should be noted at this point that the Marine Corps policy regarding wigs makes no distinction, as do the other services, in regards to baldness or disfiguration. This was a further basis upon which the Marine Corps sought to disassociate itself from the other military services in regard to the wearing of wigs as a method of compliance with the Marine hair regulation.

The court based its jurisdictional findings on the mandamus statute.[84] The court further indicated that mandamus jurisdiction would be available when the plaintiff alleges either a violation of his constitutional rights or that defendants had acted in excess of their statutory authority.[85]

Going on to the merits, the court, citing *Harris* and *Friedman*, and noting that the Army had since changed its regulation, found that the Marine Corps regulation as applied to reservists was unreasonable.[86]

1241 (W.D.N.C. 1972), and Garmon v. Warner, 358 F. Supp. 206 (W.D.N.C. 1973), unfavorably for the military

81. 357 F. Supp. at 1147.
82. Civ. No. CV 73-L-121 (D. Neb., Apr. 30, 1973).
83. *Id.* at 3.
84. 28 U.S.C. § 1361 (1970).
85. Civil No. CV 73-L-121, at 6 (D. Neb., Apr. 30, 1973).
86. *Id.*

The court rejected the claim that the Marine Corps should not be put into the same category as the other services.

The court also placed the burden of showing the reasonableness of the regulation on the Marine Corps.[87] This was the first time a court had so expressly reversed the usual burden of proof, thus making the situation analogous to the category of "suspect" classifications under the equal protection clause of the fourteenth amendment.[88]

An interesting case which made a collateral attack on the Navy's unwritten anti-wig policy came about in May, 1973, and was styled *Etheridge v. Thorn.*[89] After missing the required number of drills, petitioner was ordered to active duty for a period of twenty-one days. Upon reporting for duty, petitioner was ordered to have his hair cut. He refused and a court-martial ensued. In his complaint seeking habeas corpus relief, the plaintiff sought (1) to have the court enjoin his court-martial hearing then in progress concerning petitioner's refusal to obey the haircut order while on active duty, (2) a declaration that the Navy regulation regarding haircuts to be void, and (3) his immediate release from active duty.[90] In substance, petitioner sought to have the regulation dealing with hair grooming declared unconstitutional and void, which in turn would void the court-martial proceedings against him and release him from duty.[91]

The reason this case is under the wig category rather than the hair category is that petitioner at all relevant times was wearing a wig. However, the evidence was uncontradicted that even with the wig petitioner's hair was hanging below his collar and did not meet regulations.[92]

In deciding the case in favor of the defendant by rejecting plaintiff's petition for habeas corpus, the court cited with approval the major decisions up to that point. However, the court found an important distinction in refuting petitioner's argument that he was covered under the holding in *Friedman* when it stated:

87. *Id.* at 8.
88. In recent years, the Supreme Court has characterized certain classifications as "suspect," such as those based on race, religion, alienage, legitimacy and has required a "compelling state interest" to be shown by the state. Fundamental rights such as procreation, voting, etc., also demand similar protection by this harsh and strict standard. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969); Loving v. Virginia, 388 U.S. 1 (1967); Sherbert v. Verner, 374 U.S. 398 (1963); Batey v. Little Rock, 361 U.S. 516 (1960).
89. Civil No. 160-73-N (E.D. Va., May 8, 1973).
90. *Id.* at 3.
91. *Id.* at 3-4.
92. *Id.* at 4-5.

> Petitioner relies on the decision in *Friedman v. Froehlke*. . . . The facts of that case are to a degree different from the case of petitioner. Here, the evidence is uncontradicted that when wearing the wig, the petitioner's hair styling did not comply with the Regulation. Several witnesses testified that when petitioner wore the wig, his hair extended from beneath the wig and was down over his collar.
>
> In addition, the *Friedman* case differs from the cases in other circuits hereinabove cited, in that the *Friedman* case exempts a reservist from complying with regular military regulations.
>
> Petitioner does not bring himself within the coverage of the *Friedman* case.[93]

Good v. Mauriello,[94] involved an action by an Air Force reservist to enjoin the enforcement of the Air Force wig regulation prohibiting the wearing of wigs at weekly drills. The court found the distinction between bald and disfigured personnel who were allowed to wear wigs and others who were not so allowed to be a discriminatory classification not justified by the evidence. The court aptly characterized the regulation: "It appears sufficient to say that the wig regulation is not concerned with a neat and soldierly appearance, but is one which forbids a method of achieving the required appearance."[95] Additionally, the court stated that "if the wig otherwise complies with the regulations, the plaintiff may wear it to scheduled drills."[96]

In *Klinkhammer v. Richardson*,[97] plaintiffs made the first attempt to have the court characterize the suit as a class action. This was a Marine Corps wig case in which the reservists-plaintiffs sought (1) to have the court declare the Marine hair regulation invalid, (2) to enjoin any disciplinary action (involuntary call-up to active duty) for its past or future violation and (3) to have costs awarded.[98]

The court gave an excellent discussion of jurisdiction under the federal question statute.[99] The problem of valuation of the intangible rights involved, as well as the hardship of activation to a reservist, was discussed at length. First, the court stated that the burden of pleading and, when challenged, of supporting jurisdictional facts "by com-

93. *Id.* at 13-14.
94. 358 F. Supp. 1140 (W.D.N.Y. 1973).
95. *Id.* at 1142.
96. *Id.*
97. 359 F. Supp. 67 (D. Minn. 1973).
98. *Id.* at 68.
99. 28 U.S.C. § 1331 (1970).

petent and preponderant proof" is upon the plaintiff.[100] It went on:

> Although the general rule [a federal question plus $10,000] is easy enough to state, it can be difficult to apply, especially to an action involving the alleged deprivation of constitutional rights. These rights are among our most valuable and prized possessions; yet they are not always subject to precise monetary quantification. Courts have followed a variety of approaches to cope with the problem of translating the intangible value of constitutional rights into dollar amounts. A few courts have embraced the position that constitutional rights are "inherently priceless" and by definition exceed in value the $10,000 jurisdictional amount. . . . Some courts have adopted the opposite view and have held that a cause of action for the alleged deprivation of constitutional rights cannot meet the $10,000 requirement because those rights are not precisely quantifiable . . . .
>
> A number of courts have taken a middle ground between these two approaches in which they have attempted to ascribe a monetary value to the particular deprivation alleged in a given case. . . .
>
> Moreover, those courts which have attempted to value constitutional rights for jurisdictional purposes generally articulate the view that it is better to err on the side of a high valuation lest the plaintiff be left without a forum in which to air his grievances. . . . [I]t has been the rule . . . that courts will be alert to adjust their remedies so as to grant the necessary relief.[101]

The court went on to state that the right in question was the right of Marine reservists to wear short hair wigs to reserve drills so as to maintain satisfactory participation at the drills and thereby avoid involuntary activation.[102] The court concluded its jurisdictional discussion by listing the factors which must be added up to determine whether the required amount in controversy is present. The court stated, *inter alia*, that the economic impact of activation cannot be limited to a comparison of relative pay scales between the civilian pay and the military pay upon activation. Other factors were removal from family and dislocation from a civilian job. As to the latter factor, the court stated that dislocation for one or two years could severely hinder advancement or permanently preclude the possibility of regaining similar opportunities at a future date. Finally, the court noted that the

100. 359 F. Supp. at 69.
101. *Id.* at 69-70.
102. *Id.* at 70.

activated reservist is uprooted from his home and thrust into a completely different environment. The court concluded that the freedoms inherent in civilian life, as contrasted to the spartan demands of the military, have a substantial economic value.[103]

Regarding the class action, the court found that under rule 23(a)(1) of the Federal Rules of Civil Procedure, joinder of all the members of the class was not impracticable. Thus, the class action aspect of the suit was denied.[104]

On the merits, the court held that the military had not shown sufficiently "compelling" reasons to justify the policy of no wigs and found for the plaintiffs.[105] The court, in so holding, noted two important points. First, the court noted the practical, real-life fact that many of the reservist's enlistments were probably encouraged by the Viet Nam conflict and thus the reservists were not really an eager part of the Corps, sharing the same camaraderie as the Marine regulars.[106] Second, the court confined its holding to wigs worn at weekend drills, refusing to rule on their validity at summer camp. The plaintiffs had stressed that they only sought to wear the wigs on weekends.[107]

The most recent case to date in the wig area is *Etheridge v. Schlesinger*.[108] This case involved the same plaintiffs who had sought habeas corpus relief in *Etheridge v. Thorn*.[109] The court found it had jurisdiction on the basis of the federal question statute,[110] the Administrative Procedure Act,[111] and the mandamus statute.[112]

The court centered its attention on the distinction made by the Navy in that the Navy allowed wigs to be worn by bald or disfigured persons, but not by others to conceal their long hair, characterizing the issue as whether the administrative distinction made between wigs for bald headed men and short hair wigs is constitutional.[113] Note that the short hair wigs in question conformed to the Navy hair regulation.[114]

The court characterized the basis of plaintiff's constitutional attack

103. *Id.*
104. *Id.* at 71.
105. *Id.* at 72.
106. *Id.*
107. *Id.* at 73.
108. 362 F. Supp. 198 (E.D. Va. 1973).
109. Civil No. 160-73-N (E.D. Va., May 8, 1973).
110. 28 U.S.C. § 1331 (1970).
111. 5 U.S.C. §§ 702-04 (1970).
112. 28 U.S.C. § 1361 (1970).
113. 362 F. Supp. at 203.
114. *Id.*

on the no-wig policy as based on the right of privacy.[115] The court also alluded to the due process clause of the fifth amendment as a further basis for the regulation being unconstitutional as applied. As a result, the short hair wig policy was declared unconstitutional.[116]

C. *Summary*

In the development of the wig and hair cases certain basic propositions have consistently surfaced. First, the courts have upheld the basic proposition that certain matters, such as uniform appearance, are legitimately within the sphere of the military and are matters of internal discretion. Second, although this discretion does exist, it is bounded by certain constitutional restraints. Also, relief can be secured for abuse of this discretion without resort to the Constitution. Third, the courts appear to feel that hair is a proper subject of the aforementioned legitimate military discretion over internal matters. Fourth, the courts have, however, allowed a certain segment of the military population, namely part-time reservists, to use the wig as a method of achieving the uniform appearance sought by the military. In sum, the courts have allowed a special class of military personnel, reservists, to use a special method of compliance to achieve the legitimately regulated ends.

The most successful arguments advanced by plaintiffs in the wig cases can also be summarized. First, the right to personal appearance is a fairly well established constitutional right.[117] Although certain constitutional rights are legitimately curtailed by one's military status, the courts have found that the first amendment, the due process clause of the fifth amendment, and the ninth amendment's right of privacy have all been sufficient to overcome this presumption of legitimate military curtailment regarding wig compliance with the hair regulations. Thus, the plaintiffs have emerged victorious. Second, the courts

115. *Id.* The right of privacy has been held to be part of the ninth amendment of the United States Constitution. Griswold v. Connecticut, 381 U.S. 479 (1965) (Goldberg, J., concurring).

116. 362 F. Supp. at 204.

117. *See* Massie v. Henry, 455 F.2d 779 (4th Cir. 1972); Bishop v. Colaw, 450 F.2d 1069 (8th Cir. 1971); Crews v. Cloncs, 432 F.2d 1259 (7th Cir. 1970); Richards v. Thurston, 424 F.2d 1281 (1st Cir. 1970); Breen v. Kahl, 419 F.2d 1034 (7th Cir. 1969), *cert. denied*, 398 U.S. 937 (1970). *Cf.* Gfell v. Rickelman, 441 F.2d 444 (6th Cir. 1971). *Contra*, Karr v. Schmidt, 460 F.2d 609 (5th Cir. 1972) (8-7 decision, en banc); King v. Saddleback Junior College Dist. 445 F.2d 932 (9th Cir.), *cert. denied*, 404 U.S. 979 (1970). *See generally* Comment, *Public Schools, Long Hair, and the Constitution*, 55 IOWA L. REV. 707 (1970); 84 HARV. L. REV. 1702 (1971).

have been impressed with the basic inequities involved in the attempt by the military to regulate one's normal civilian manner of appearance so as to make it conform to the military's standards even though the time spent in military duties lasts a fraction of the time of the normal working year. This can best be categorized as the "disparity of time" argument.

Finally, the courts have failed to be impressed with the military's arguments for banning wigs and this has, in itself, worked to plaintiff's advantage. The claims by the military regarding morale, discipline, interference with performance of duty, and health have all fallen by the wayside. At least one court has taken judicial notice that hair and other disciplinary regulations are often relaxed in combat.[118] The only possible justification left would be that a wig is a safety hazard. This argument would appear to be limited in application to persons working with machinery, etc., where, for example, if a wig fell into a machine, it could cause substantial property damage or personal injuries.

IV. The Results of the Wig Litigation and the Outlook for the Future

A. *Changes in the Wig Policy*

As has already been stated, the Army has changed its wig policy to allow reservists to wear wigs to both weekend drills and while on active duty training for periods of up to thirty days.[119] The Marine Corps has retained their present absolutist no wig policy for any personnel, whether regular or reservist. The Air Force and the Navy positions lie between the position of the Army, on one hand, and that of the Marines, on the other. The Air Force allows bald and disfigured individuals to wear wigs, but no one else. The Navy has changed its policy to allow reservists to wear wigs for weekend drills but not for the summer training duty periods.[120]

B. *Outlook for the Future*

The most likely issues to appear in litigation in the near future are: (1) whether reservists should be allowed to wear wigs not only on the

118. Klinkhammer v. Richardson, 359 F. Supp. 72 (D. Minn. 1973).
119. *See* note 9 *supra.*
120. *See* note 6 *supra.*

weekends at their drill meetings, but also during their active duty for training periods of short duration, (2) whether the distinction between men and women in regard to the length of their hair and the methods of compliance (*i.e.*, wigs) is in excess of the military's discretion or unconstitutional, and (3) whether the distinction between reservists and regulars is constitutional and if one group is allowed to wear wigs as a method of complying with the grooming regulation, why not the other?

Until the military services all take a uniform approach to these questions, the various litigation sections of the respective Judge Advocate General's Corps will be kept knee-deep in hair and wig litigation. The Army (and to a lesser extent, the Navy), which has forged ahead in this area and which seems to be the only service willing to see the light in responding to the cases, would appear to cast a doubt on the validity of any arguments the other services might make to justify their positions regarding the issue of reservists and wigs.

The major argument which has won the day for the plaintiffs appears to be that reservists are essentially civilian in nature and the great disparity of time they spend in civilian life as opposed to the time in uniform justifies the wig method of compliance with the hair regulation. This argument would seem to logically carry over to the short summer training period. The Army has taken this into account by including both aspects into their new regulation. With the time disparity being still greatly disproportionate between summer duty plus weekend drills and the other civilian time, it would appear that the courts may also strike down the wig regulation should reservists attempt to litigate the matter of the wearing of wigs during active duty for training. The Army regulation, which has already taken this forward step by including summer training duty, would lend further support to the arguments of potential plaintiffs.

On the matter of the distinction between men and women regarding the wearing of wigs, it would appear that in these times of "liberation" some men's liberators might also raise an outcry. Already in other areas of military litigation the case is being made for treating men and women alike.[121]

Although the military may have a rocky road justifying the difference in treatment regarding the wearing of wigs by men and women,

121. *See* Frontiero v. Richardson, 411 U.S. 677 (1973); Ballard v. Laird, Civil No. 72-218-S (S.D. Cal., June 26, 1973).

and the wearing of wigs by reservists on weekend drills and active duty for training, it appears that it has a better case to prevent the wearing of wigs by regulars who have long natural hair.[122] No argument can be made here that a great disparity exists between time spent in uniform and time in civilian life, because regulars are, by definition, military men 100 per cent of the time. Additionally, this would totally undercut the short hair policy, something the courts in the "hair cases" have refused to do. The only argument contra would appear to be that made by the military in the "hair cases," to wit, that the reserves and the regulars are all part of a unified "one force concept" and, therefore, all should be treated the same across the board. By arguing this, the regular plaintiff would, in effect, be arguing *offensively* what the military argued *defensively* in the "hair cases."

It appears that the wave of wig litigation is at an important stage in its evolution. Hopefully, the other military services (besides the Army) will forestall any further litigation by changing their regulations to conform to the multitude of adverse court decisions. Certainly such a comparatively trivial area such as wigs and the length of hair should not cause such pervasive litigation.[123] The words of one court have attempted to put this whole matter into proper perspective:

> The ancient strong man Sampson, General George Washington, General Ulysses S. Grant and other military personages have managed to ply their military genius effectively in time of war, despite the handicap of unshaven faces or unshorn locks.
> Not so the modern American peace time . . . Reserve.[124]

C. *Proposals*

The most logical solution for the wig problem is allowing both regulars and reservists to wear wigs during the performance of their duties as long as the wigs pose no health or safety hazard. The justification for short hair as a method of discipline is, at best, a roundabout method of achieving the same. As the quotation above points out, military effectiveness and discipline have been shown to have no rela-

122. *Cf.* Stradley v. Anderson, 478 F.2d 188 (8th Cir. 1973) (involved a policeman). It should be noted that since the new Army regulation change allowing wigs for reservists, there have been no reported cases brought by Army regulars seeking to wear wigs. Note, however, the possibility of the use of 10 U.S.C. § 277 (1970), as a method of attack by regulars seeking to wear wigs. *See* note 13 *supra*.

123. There have been at least 30 wig cases since April, 1972.

124. Bellamy v. Froehlke, 347 F. Supp. 1241 (W.D.N.C. 1972).

tion to the length of one's hair. It would be well to remember that when Sampson's hair was cut, he became a weakling; it is possible that if the military allows the converse of its present policy, morale, recruitment, retention, discipline, and the effective fulfillment of its mission might be enhanced by the presence of more Sampsons within its ranks.